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KIRBY CORPORATION



DEPARTMENT OF TRANSPORTATION
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DOCKET SECTION

July 23, 1998

Docket Management Facility (USCG-1998-3798) - 2
U. S . Department of Transportation
Room PL-40 1
400 Seventh Street, SW
Washington, DC 20590-000 1

RE: ANPRM - Numbering of Undocumented Barges (USCG-1998-3798)

Dear Sir/Madam:

Kirby Corporation is pleased to provide its comments to the referenced docket on the Coast Guard's Advance Notice of Proposed Rulemaking, published July 6, 1998 (63 FedReg 36384).

Kirby Corporation is a significant U.S. marine transportation company. Through its subsidiaries, Kirby operates some 534 tank barges on the inland waterways of the United States. Of that number, 99 are undocumented. Of that number of undocumented barges, 9 were, at one time, documented and, as a consequence, have an Official Number. Although we have a corporate policy of documenting all vessels in our fleet, as many additions to that fleet have been through acquisition of other companies, we have not always been able to document the necessary chain of title and/or citizenship of intermediate owners to enable us to do so. As you are, of course, aware, 46 USC 1211 O(b) permits a barge which is qualified to be employed in the coastwise trade to be so employed on inland waters without being documented.

We will address specific questions set forth in the ANPRM in the remainder of this letter. We would, however, like to make some general comments about the nature and direction of the Coast Guard's rulemaking effort. Kirby supports the intent of the Abandoned Barge Act of 1992, particularly reducing the likelihood of abandonment of barges along U.S. waterways, barges which potentially represent a risk of pollution. We would, however, caution the Coast Guard as it proceeds with rulemaking to implement the Act, that it not develop a system which unnecessarily burdens responsible barge owners and operators. The past decade has seen significant consolidation in the inland towing industry. This is particularly true of the liquid cargo segment of that industry. Larger, responsible companies own and operate a significant portion of the barges which would be affected by the regulations being developed. It is highly unlikely that any

of those owners/operators could ever intentionally abandon any of its barges, particularly if the barge contained pollutants. The effects of adverse publicity and potential for civil and criminal penalties militate strongly against such action. The barge abandonments which fueled the Act were, in our view, a product of a much less regulated operating environment of the 1970s and 1980s, an environment that saw both boom and bust in the offshore oil exploration and production in the Gulf of Mexico and in which investment tax credit provisions of the Internal Revenue Code encouraged the ownership of barges by individuals with no connection to or no other stake in the U.S. maritime industry.

We believe that, like Kirby, most inland barge operators currently have a fleet consisting of some documented barges, some once documented but not currently documented barges, and some barges which have never been documented. We are concerned that the regulatory action being contemplated will have an unfairly adverse impact on the larger owners and operators. Not only will they bear the incremental burden associated with application and marking for each affected barge, they will also, it would appear, be faced with three separate sets of requirements for documented, once documented, and never documented barges. While we can appreciate the pressure on the Coast Guard to promulgate regulations implementing the Act, we can see no logical justification for such differing sets of rules. Indeed, it would seem just as likely that an abandoned barge could fall into any of the three categories previously described. Why, then, for example, should the owner of an undocumented barge be required to permanently affix a number to the exterior of its barge (because, if the barge is abandoned, it will be difficult to identify the barge), when the longstanding requirement for internal permanent marking of the Official Number on an identical documented barge is sufficient. We strongly encourage the Coast Guard to adopt requirements which impose a minimal cost and administrative burden on barge owners and which are as consistent as possible with the existing requirements for documented barges. More specific responses to the questions posed in the ANPRM follow.

1. **How should the Coast Guard address undocumented inspected barges with Official Numbers? Should the barge owner be required to obtain a number under this proposed system?** The Coast Guard should not assign a number or identifier which is different than the Official Number once assigned to the barge, despite the fact that it may currently be undocumented. That original Official Number appears on the barge's Certificate of Inspection and is the resident identifier for the barge in the Coast Guard's electronic records related to inspection, violations of regulation, user fees, etc. We can see no justification for requiring the barge owner to obtain (let alone mark) yet another number under the proposed system. Indeed, the Coast Guard is not proposing (nor do we believe that it should) to require the owner of a documented barge to obtain yet another identifying number under the proposed system. The once documented barge should be treated no differently.

2. **Are there other options the Coast Guard should consider for undocumented barge numbers?** For many years, the Coast Guard has issued "CG Numbers" to undocumented barges in conjunction with their initial inspection for certification. These CG numbers appear in the "Official Number" block of the Certificate of Inspection and are the resident identifiers for those barges in the Coast Guard's electronic records related to inspection, violations of regulation, user fees, etc. We strongly encourage the Coast Guard, for reasons of consistency and simplicity, to continue the use of CG Numbers in this fashion and as the identifier for inspected, undocumented barges under the rulemaking being contemplated. Indeed, we would encourage the Coast Guard to expand the use of CG Numbers to provide identifiers to uninspected, undocumented barges which are subject to the rulemaking being contemplated.
3. **Should barge numbers be attached to the exterior of a vessel's hull? How large should the number be? Where exactly should the numbers be attached? Would numbers possibly interfere with other barge markings? Should barge numbers be bead welded to the hull? Are there other attachment methods that the Coast Guard should consider?** In preface to these questions, the ANPRM indicates that the Coast Guard believes that numbers should be welded externally to discourage removal and be clearly visible from a distance to help identify barge owners and that the Coast Guard believes that numbers should not be marked on the interior because this makes identification difficult. We must question the Coast Guard's justification for its conclusions when no such external marking requirements apply (or should apply) to documented barges, barges which may well be nearly identical in construction, route, and service and owned and operated by the same entity. The Coast Guard should not require that barge numbers assigned pursuant to the contemplated rulemaking be attached to the exterior of the barge. If the number must be permanently marked, the requirements for marking should be consistent with those for the marking of the Official Number on a documented barge. Indeed, external marking would likely interfere with other barge markings including the barge name and, in the case of a tank barge, the various marking requirements of 46 CFR Subchapters D and O.
4. **Is the proposed application information discussed above adequate to identify barge owners? Should the application request barge operator information? Is the proposed information readily available?** While the proposed application information is likely both adequate to identify the barge owner and readily available, it is also (1) considerably broader than the range of information required for the same owner to document the same barge and (2) would create an unreasonable administrative burden on the owner if, as it appears is contemplated, there is an attendant requirement for updating application information such as changes of phone numbers, e-mail addresses, and barge operating areas. The information collection burden on the owner should be no greater than that related to the documentation of the barge.

5. **How long after the effective date of any future regulations should owners submit their numbering applications to the Coast Guard? Who should initiate numbering application renewal upon change of ownership, the seller or the new owner? How long after a change of ownership should this paperwork be submitted to the Coast Guard? If you had the option of submitting a numbering application or application update electronically via the Internet, would you take advantage of the service?** We believe that the Coast Guard should allow vessel owners a reasonable period of time following the effective date of future regulations for compliance. Six months would appear to be an adequate period. With respect to change of ownership, we must again urge the Coast Guard not to impose requirements that are more onerous than those applicable to documented vessels. Accordingly, any such requirement should be placed on the new owner. When a documented barge is sold, its Certificate of Documentation becomes invalid, and it is, as a practical matter, only the new owner's desire to redocument the barge with a coastwise endorsement, or the insistence of a lender that he do so to permit the recording of a mortgage, that causes the submission of an application. We find it difficult, then, to see how the Coast Guard can justify a specific time requirement for the submission of an application with respect to the sale of an undocumented barge. With respect to electronic applications, we encourage the Coast Guard to employ this vehicle wherever possible.
6. **Is the population range of 10,000 to 14,000 undocumented barges measuring more than 100 gross tons accurate? How can the Coast Guard obtain a more accurate population estimate? What is the best way to contact owners and operators of undocumented barges measuring more than 100 gross tons?** We have no definitive basis to confirm or dispute these numbers. While we believe that virtually all inland tank barges and most inland dry cargo barges measure more than 100 gross tons, we cannot with any degree of confidence speculate on the gross tonnage of a typical inland dry cargo barge although deadweight tons are comparable to inland tank barges. More accurate industry wide information may be available through trade associations such as The American Waterways Operators.
7. **The Coast Guard may charge a fee for initial and subsequent barge numbering to offset agency costs, and is interested in comments regarding the appropriateness of such fees.** We are opposed to the establishment of user fees in connection with the regulatory requirements being contemplated. We do not believe that the contemplated requirements would result in a "service" to us as vessel owners or add value to our operations. Indeed, the contemplated requirements are aimed at a problem that is not of our making. In our view, the Coast Guard lacks the justification necessary for the establishment of such fees.

8. **Is the cost estimate of \$500 to \$1,500 for attaching permanent numbers to barges accurate? Does it include all costs associated with barge numbering (barge out-of-service costs, shifting expenses, etc.)? Will most barge owners attach numbers in-house or have a shipyard do the work? How would costs differ according to types of barges (tank barge versus construction barge, for example)?** As indicated in the foregoing comments, Kirby's frame of reference is that of a tank barge owner. In our view the cost for attaching permanent numbers to a tank barge would be, significantly higher, \$1,500 to \$2,000 per barge, plus the cost of gas freeing the barge. The gas freeing costs would range from \$5,000 to \$28,000, depending on the prior cargo. We would expect that the cost incurred would be less for other types of barges. We would also expect that most barge owners would employ a shipyard or other barge repair facility to attach the permanent numbers.
9. **What are the common uses (services) for undocumented and uninspected barges measuring more than 100 gross tons? Where do most barges operate?** We believe that the common uses for such barges include the carriage of drybulk cargoes such as grain, coal, rock, and scrap metal. Most barges operate on the inland waterway system.
10. **What are the average maintenance intervals for undocumented barges measuring more than 100 gross tons?** It is difficult, and likely inappropriate, to attempt to determine an "average" maintenance interval for such barges. While many undocumented barges are engaged in the carriage of cargoes such as those listed in our response above, many barges certificated to carry oil and hazardous substances are undocumented, owing to the provisions of 46 USC 12110 referred to above. Dry cargo barges and tank barges are operated in very different services and conditions, and tank barges are subject to a substantial construction/equipment/maintenance regulatory regime. The average tank barge undergoes some maintenance at least annually in connection with inspection for certification and midperiod inspection.
11. **What is the average barge service life for undocumented barges measuring more than 100 gross tons?** The average service life for an inland tank barge is approximately 25 to 30 years although well maintained barges may be safely operated well beyond 30 years. Again, other barges in other services will have different service conditions and, hence, different service lives.
12. **What is the average annual construction rate for new undocumented barges measuring more than 100 gross tons?** In our view, the average annual construction rate for new, undocumented tank barges is practically nil. Few new tank barges are being constructed, and, we believe, all are likely documented, either owing to the owner's desires or the necessity of recording the mortgage in favor of the lender financing the construction.

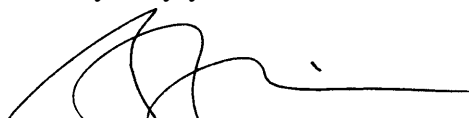
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Page 6

13. **How often, on average, do barges measuring more than 100 gross tons change owners?** We have no statistical basis upon which to base a response. We would again point out that an effort to determine an "average" with respect to vessels in very different services is likely contrived and, therefore, inappropriate.

Kirby appreciates this opportunity to provide its comments to the docket. We would be pleased to discuss them with appropriate Coast Guard staff at any time. If you have any questions with respect to Kirby's comments, please feel free to contact the undersigned.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Gerald A. Gallion', with a long horizontal line extending to the right.

Gerald A. Gallion
Corporate Counsel

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cc: Jennifer Kelly - The American Waterways Operators Association